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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,184

03/24/2004

Raghavan Rajagopalan

1486.1:H US (073979.68)

4580

27805

7590

09/16/2009

THOMPSON HINE L.L.P.
Intellectual Property Group
P.O. BOX 8801
DAYTON, OH 45401-8801

EXAMINER

PACKARD, BENJAMIN J

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

09/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,184	RAJAGOPALAN ET AL.	
	Examiner	Art Unit	
	Benjamin Packard	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/29/09 has been entered.

Applicants' arguments, filed 06/29/09, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 112 – Written Description

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11, 12, and 21-27 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

This rejection is now expanded to all terms of the pending claims which lack written description, (1) AR is an aromatic or a heteroaromatic radical “derived” from, (2) somatostatin receptor binding molecules, (3) ST receptor binding molecules, (4) neurotensin receptor binding molecules, (5) carbohydrate receptor binding molecules, (6) steroid binding molecule, and (7) CCK receptor binding molecule.

Examiner notes a second declaration of Dr. Buolamwini was submitted in the filing dated 6/29/09 where Dr. Buolamwini declares the “E” portion of the formula is considered targeting and that a medicinal chemist would know or can easily find the identity, characteristics, etc of such molecules that target the bombesin receptor (pg 2 second full paragraph). Attached to the declaration is an article which discusses bombesin receptors.

Examiner disagrees. First, while the declaration is directed to what is now known, there is no assertion as to what was known at the time of filing, which is the time of interest with regards to whether the Applicant sufficiently described or had possession of the invention at the time of filing.

Second, the declarant’s assertion that the skilled artisan would know or can easily find the identity, characteristics, etc of such molecules that target the bombesin receptor seems to be rebutted by the art submitted which antedates the application priority date, where at pg 33 last paragraph of the art, the Authors note unresolved issues include knowing what the structure of the natural ligand of the BB3 receptor is and even question whether an equivalence to the frog BB3 exists in humans and

mammals. Where it is unclear what receptors exist, it is unclear how one can immediately envision targeting molecules for that general class of receptors.

Finally, with regards to the additional terms, group (1) lacks written description where the term “derived” modifies aromatic and heteroaromatic radicals and it is unclear how far the radicals can be derived and still have sufficient written description. With regards to groups (3)-(7), again, the claims are directed to functional limitations with no structural description which might lead one of skill in the art to believe Applicant’s were in possession of the genus instantly claimed.

Claim Rejections - 35 USC § 103

Claims 11, 12, and 21-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sykes et al (US 6,313,274) in view of Pinney et al (Biochemistry, Vol 30, No 9 1991, pp 2421-2431).

Applicants assert the claims should be interpreted in light of the specification and that the instant specification teaches the azide moiety produces nitrene upon photoactivation and AR is a chromophore that undergoes sensitization.

Examiner disagrees. While the claims are interpreted in light of the specification, limitations in the specification are not read into the claims. see MPEP 2105 II C. Here, the claimed limitations are not being interpreted in light of the specification because the terms of the claims do not require the same. Regardless, this discussion is now moot as Applicants amendment dated 06/29/09 now removes the requirement that the compound be an “organic azide photosensitizer” and simply requires the “compound” be

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administered, allowing the compound to accumulate, and exposing the compound light of a specific wavelength (see amended claim 11). Thus, the method steps are still met by the method of the prior art where the compound is administered and then exposed to light after accumulation as discussed in the final rejection dated 02/05/09 and incorporated herein by reference.

Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-F 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Benjamin Packard/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612